IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

CRL.A.No. 630 of 2006(C)

SC.409/2004 of ADDL. DISTRICT & SESSIONS (AD HOC) FAST TRACK COURT II, PATHANAMTHITTA.
CP.6/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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APPELLANT/ACCUSED:

PUSHPANGADAN, S/O. KUNJU PILLAI,
C.NO.8642, CENTRAL PRISON, POOJAPPURA P.O.,
TRIVANDRUM-12.

BY ADV. ADV.SABU GEORGE (STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI,. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 630 OF 2006

Dated this the 14th day of December, 2006

JUDGMENT

The appellant is the accused in Sessions Case No.409 of 2004 on the file of the Additional District and Sessions (Ad hoc) Fast Track Court II, Pathanamthitta. He faced trial for the offence punishable under Section 8 (1) read with Section 8(2) of the Abkari Act.

2. The prosecution case against the appellant was that on 1.7.2000 at 12.20 P.M., he was found keeping in possession two glass bottles each containing 750 ml. of arrack without any authority under the provisions of the Abkari Act. To prove the case against the appellant, the prosecution examined PWs.1 to 6 and produced Exts.P1 to P8 as well as MOs.1 and 2 glass bottles. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. and he denied the incriminating circumstances alleged against him. Relying on the evidence adduced by the prosecution, the trial court found the appellant guilty under Section 8 (1) read with Section 8(2) of the Abkari Act, convicted him thereunder and sentenced him to undergo simple imprisonment for a period of two years

and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year. The above conviction and sentence are challenged in this appeal.

3. This appeal is filed through the jail authorities. Since the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor . Learned counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the prosecution evidence to find the appellant guilty of the offence alleged against him as the only evidence available was that of the official witnesses and the two independent witnesses examined by the prosecution did not support the prosecution case as such.

4. The prosecution case was spoken to by PWs.1 and 2 , the excise officials who detected the crime. PW.1, Excise Inspector, Pathanamthitta, deposed before the court below that on 1.7.2000 at 12.20.P.M. while he was PW.2 were on patrol duty, they saw the appellant near Ulanadu Sreekrishna Swamy Temple carrying a bag and on questioning the appellant it was revealed that the bag contained two bottles each

containing 750 ml of arrack. PW.1 further deposed that he seized the contraband articles as per Ext.P2 mahazar which was attested by PWs.3 and 4, arrested the appellant at the spot and produced the appellant along with the contraband articles before PW.5. Sample was taken and sent for chemical analysis. PW.1 also stated that he prepared Ext.P5 property list. Subsequently, the appellant and the contraband articles along with the sample were produced before the court. PW.2, the Preventive Officer who had accompanied PW.1 corroborated the version of PW.1. Even though PWs.3 and 4 did not support the prosecution case as such, they had admitted their presence at the scene of occurrence. PWs.5 and 6 are Excise Inspectors who continued the investigation and filed the charge sheet on getting the chemical analysis report. These two witnesses proved that as per Ext.P7 chemical analysis report, the sample contained 71.85% by volume of ethyl alcohol.

5. The trial court accepted the above evidence and found that the prosecution succeeded in proving the case against the appellant. With regard to the contention of the learned counsel for the appellant that there was no independent evidence to corroborate the evidence of the official witnesses, it has to be noted that the prosecution had examined PWs. 3 and 4 and though they had not fully supported the prosecution case, they

had admitted their presence at the scene of occurrence and PW.4 had even admitted his signature in Ext.P2 mahazar. Hence, the contention of the learned counsel for the appellant is not tenable.

6. On an overall appreciation of the prosecution case, this Court is of the view that the trial court was fully justified in finding the appellant guilty of the offence alleged against him. Hence, the findings entered by the trial court require no interference. With regard to the sentence, it is seen that the trial court had considered the gravity of the offence committed by the appellant. Though the punishment for such an offence is imprisonment for a term which may extend to ten years, the trial court only sentenced the appellant to undergo simple imprisonment for a period of two years. The fine imposed is also as per the provisions of the Abkari Act. Hence, no interference is called for with regard to the sentence passed by the trial court.

The Crl. Appeal is accordingly dismissed, confirming the conviction and sentence passed by the trial court.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO. 630/2006

JUDGMENT

14TH DECEMBER, 2006.